

In the *Omaha Forbearance Order*, the Commission also found that the costs of continued section 251(c)(3) unbundling outweighed the benefits;²²⁴ something which Verizon claims is true generally in each of the six MSAs that are the subject of its Petitions.²²⁵ The Commission concluded that the “costs [of unbundling] are unwarranted and do not serve the public interest once local exchange and access markets are sufficiently competitive, as is the case in certain limited areas of the Omaha MSA.”²²⁶ Here, because Verizon has failed to demonstrate, in any of the six metropolitan areas that are the subject of its Petitions, sufficient competition in any relevant geographic market, *i.e.*, wire center, the Commission has no basis to conclude, even “in certain limited areas of the [subject] MSA[s],” that the costs of unbundling outweigh the benefits.

More particularly, Verizon offers no evidence in its Petitions that the regulations at issue are hindering its ability to compete. Rather, despite the costs of unbundling, competition and consumer interests will continue to benefit from unbundling throughout the six MSAs.²²⁷ Indeed, the evidence is compelling that competitive conditions in these MSAs are such that

²²⁴ *Omaha Forbearance Order*, ¶¶ 76-77.

²²⁵ *See* Verizon Petition - New York, at 26-21; Verizon Petition - Philadelphia, at 27; Verizon Petition - Pittsburgh, at 25; Verizon Petition - Providence, at 25; Verizon Petition - Virginia Beach, at 25; Verizon Petition - Boston, at 25-26.

²²⁶ *Omaha Forbearance Order* ¶ 77.

²²⁷ Verizon claims that the unbundling requirements in the subject MSAs are “excessive.” *See, e.g.*, Verizon Petition - New York, at 25. Because Verizon has failed to meet its burden to demonstrate sufficient competition in any particular wire centers in any of the six MSAs, it has no foundation for this assertion. As a result of this failure, any assertion that its unbundling obligations are “excessive” reduces to the untenable assertion that *any* of its unbundling obligations are excessive, a conclusion which is totally at odds “with Congress’s clear intent in section 10 to sunset *in a narrowly tailored fashion* any regulatory requirements that are no longer necessary in the public interest so long as consumer interests and competition are protected.” *See Omaha Forbearance Order*, ¶ 40 (emphasis supplied).

continued unbundling is required because market forces alone cannot be relied upon to sustain competition,

Verizon relies in part on the competition provided by “traditional CLECs” to support its requested relief in both the mass market and the enterprise market.²²⁸ Yet these competitors in the Verizon incumbent local operating territory – including the Commenters – continue to rely overwhelmingly on Verizon-provided unbundled loop and transport UNEs to serve their hundreds of thousands of customers located throughout the Verizon footprint. As discussed in detail in Section IV.B, these service providers have no practical alternatives to use of Verizon’s wholesale network facilities, particularly Verizon’s last mile capabilities, to reach consumers. If the current regulatory obligation on Verizon to make these wholesale inputs available to competitors on cost-based (*i.e.*, TELRIC) rates and terms were to disappear through forbearance, it is difficult to see how consumers and competition would benefit. Indeed, the result would quite likely be the opposite; wholesale rates for loops and transport would rise, driving some competitors out of the market entirely and forcing the remaining carriers to raise rates and limit service options.

The stark nature of the options Verizon has presented to carrier customers shows the strength of Verizon’s market power in the DSI and DS3 UNE markets. If carrier customers enjoyed any real alternatives to Verizon’s DSI and DS3 offerings – either through self-supply or alternative wholesale service arrangements – Verizon could not offer a special access product guaranteed to significantly increase carriers’ costs and expect to be taken seriously. In a

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See, *e.g.*, Verizon Petition - Boston, at 4 (“Traditional CLECs, including carriers that obtain wholesale service from Verizon provide an additional layer of competition.”), and at 22 (“[I]n addition to the cable companies, a large number of other competitors provide extensive retail competition in the Boston MSA. Such competitors include traditional telecom carriers such as AT&T, Level 3, Sprint, Global Crossing, PAETEC, Broadwing and One Communications . . .”).

competitive market, a service provider must offer its products at price levels that attract customers. An offering like Verizon's New Option,²²⁹ which would necessarily substantially increase a potential customer's costs – and lock the customer in to higher rates for the entire multi-year term of the service arrangement – would never make it to market. Likewise, no carrier with practical alternatives would spend more than a moment considering Verizon's New Option before rejecting it. Verizon's New Option only exists because in the current competitive environment carriers are compelled to rely on Verizon's facilities and services to reach consumers. In such an environment, one can expect that Verizon's DS1 and DS3 prices would be even higher in the absence of regulatory compulsion to offer DS1 and DS3 loops and transport at cost-based rates. This is compelling evidence that competitive conditions in the Verizon operating territory are such that market forces alone cannot be relied upon to sustain competition.

Verizon also contends that “eliminating unbundling regulation will ‘further the public interest by increasing regulatory parity’ between telecommunications providers” in the subject MSAs.²³⁰ Verizon argues that because it is losing customers to intermodal competitors, it would be in the public interest to end allegedly unequal regulation between the different technological modes of delivery. In the *Omaha Forbearance Order*, however, the Commission made clear that the impetus to create technological parity is warranted only “[o]nce the benefits of competition have been sufficiently realized and competitive carriers have constructed their own last-mile facilities and their own transport facilities.”²³¹ As shown herein, there is not yet sufficient actual competition from wireless, cable, O/VoIP, or other service providers in any wire

²²⁹ Verizon's New Option is discussed in Section VI

²³⁰ See, e.g., Verizon Petition – New York, at 21 (*quoting Omaha Forbearance Order*, ¶ 78)

²³¹ *Omaha Forbearance Order*, at ¶ 78.

center in any of the six MSAs that are the subject of Verizon's Petitions. Steps taken to establish technological parity cannot precede the emergence of sufficient competition but, instead, must effectively derive from it. Given the state of the market in the six MSAs at issue and Verizon's failure to meet its burden of proof, establishing technological parity at this time in any of the wire centers in any of the six MSAs would be unwarranted, premature, and certainly *not* in the public interest.²³²

As a further reason why forbearance from section 251(c)(3) unbundling would not be in the public interest, the Commission only slightly more than a year ago approved Verizon's merger with MCI in part because of continuing obligations the merged entity would have to unbundle loop and transport network elements.²³³ Removing those unbundling obligations so soon thereafter, especially in light of Verizon's failure to make a showing of sufficient competition, would be contrary to sound public policy.²³⁴ Before the Commission could seriously entertain the thought of removing these unbundling obligations, Verizon would be required to make a much more compelling and detailed showing than it has.

In making its public interest determinations, Section 10(b) requires the Commission to consider whether forbearance "will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of

²³² Notably, Verizon fails to make the argument, relied upon by the Commission in the ***Omaha Forbearance Order***, that forbearance would motivate Qwest to compete vigorously on both a retail and a wholesale basis. *See Omaha Forbearance Order*, ¶¶ 79-81.

²³³ ***Verizon-MCI Order***, ¶¶ 33, 51, n. 130.

²³⁴ Indeed, as discussed in Section IV.B, one of Verizon's post-merger commitments and a condition of the Commission's merger approval was that Verizon would not raise section 251(c)(3) UNE rates for two years. ***Verizon-MCI Order***, App. G, Unbundled Network Elements, ¶ 1. Were the Commission to grant forbearance and thereby eliminate the obligation to provide section 251(c)(3) UNEs before the two years has expired, the merger commitment would be rendered nugatory.

telecommunications services.”²³⁵ A finding that forbearance will promote competition could form the basis for a conclusion that forbearance is in the public interest. At the same time, however, a mere finding that forbearance would not be detrimental to the public is not enough. The Commission must not only establish that forbearance would not unduly *harm* consumers and competition, it also must find that substantial competitive *benefits* would arise from forbearance. Verizon has failed to establish such benefits would accrue to the public and, accordingly, the Commission should conclude that the Section 10 standard has not been met.²³⁶

B. Consumers Would Be Harmed If Forbearance Is Granted

Even if the Commission concludes that the needs of individual competitors do not present a compelling basis upon which to resolve Verizon’s Petitions (and the Commenters do not suggest that this is the case), section 10(a)(3) compels the Commission to give great weight to the interests of *telecommunications consumers* in the MSAs at issue. Careful consideration of the current state of competition in the six MSAs at issue leads inexorably to the conclusion that consumers in Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach would suffer significant harm should forbearance be granted.²³⁷

²³⁵ 47 U.S.C. § 160(b)

²³⁶ A similar analysis of detrimental effects versus competitive benefits was recently undertaken by the Commonwealth Court of Pennsylvania in the context of the Verizon-MCI merger. There, the Court, addressing the Pennsylvania Public Utility Commission’s (“PA PUC”) decision to refrain from adopting any Pennsylvania-specific conditions on its approval of the merger between Verizon and MCI, held that the PA PUC erred in its failure to “either reject the merger or impose conditions that will benefit the public in a substantial way.” *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Opinion (Commonwealth Ct of PA, Feb. 20, 2007), Slip Op. at 29. The Court pointed out that the Pennsylvania Public Utility Code requires that proponents of a merger demonstrate that the merger will affirmatively promote the public interest in some substantial way, not merely that the merger would not have an adverse effect on the public. *Id.*, at 22. The Court remanded the proceeding to the PA PUC to perform the required analysis.

²³⁷ Importantly, the Virginia State Corporation Commission has expressed its concern that granting Verizon forbearance from unbundling requirements in the Virginia Beach MSA . . . *Continued*

As discussed above, competitive carriers continue to rely on Verizon's loops and transport facilities to reach their customers. Continued access to Verizon's loops and transport under section 251(c)(3) at TELRIC rates is critically important to carriers serving either the mass market or the enterprise market within the six **MSAs** at issue. Unfortunately, widespread wholesale alternatives to use of Verizon's facilities and services do not presently exist, nor are they on the horizon, and complete self-supply generally is not practically or economically feasible. The ability to use Verizon's network at cost-based rates remains absolutely essential to ensure that consumers of competitive carriers continue to enjoy the value-added competitive services they currently enjoy today and to take advantage of the competitive innovations of tomorrow.

For example, Covad Communications purchases DSO UNE loops from Verizon and uses them in conjunction with its own next-generation ADSL2+ facilities to offer a Line Powered Voice ("LPV") product which provides customers value-added bundles of local and long distance voice and high-speed Internet access with speeds of up to 25 mbps for a single monthly fee. EarthLink currently uses LPV to make its "**DSL & Home Phone**" service available in 11 major cities, including Philadelphia and New York.²³⁸ Covad expects to make similar LPV service offerings available to other wholesale partners for residential and/or business use and

could have a deleterious effect on consumers and competition. *See VCC Comments*, at 3 ("We are concerned that granting Verizon's petition may result in reducing the choices that consumers already have in the telecommunications marketplace in the Virginia Beach **MSA**.").

²³⁸ EarthLink's DSL & Home Phone service offers residential consumers three bundles of voice and DSL services with differing voice usage amounts, premium calling features, and broadband speeds at \$49.95 to \$69.95 per month. *See* <http://www.earthlink.net/voice/bundles/dslhomephone/>.

directly to its own business customers in the future.²³⁹ Similarly, XO uses DSO loops in association with Ethernet over copper technologies deployed in XO's network to enable the provision of broadband services at multi-megabit per second speeds *not* thought possible only a few years ago. In addition, technologies available today can support numerous simultaneous streams of high-definition video, becoming a formidable competitive alternative to the hybrid fiber-coax ("HFC") plant of cable providers and the FTTH/FTTC/fiber-to-the-node plant of the incumbent LECs. Absent DSO UNE loops, these innovative competitive service offerings would likely not be available to consumers at all.

Because competitive carriers remain reliant on access to Verizon's loop and transport UNEs, the grant to Verizon of forbearance from UNE unbundling obligations (including TELRIC pricing) would force competitive carriers to raise prices, narrow their service offerings, and curtail the introduction of innovative products and services. Thus, millions of consumers in the six MSAs at issue soon would be faced with less carrier and service choices and, perhaps most importantly, higher prices.

²³⁹ See Covad Completes Build-Out of Nation's Largest Next Generation Telecommunications Network Ahead of Schedule (Dec. 27, 2006) *available at* http://www.covad.com/companyinfo/pressroom/pr_2006/12_27_06.pdf.

VIII. CONCLUSION

For all of the forgoing reasons, Verizon's Petitions should be dismissed. If the Commission declines to dismiss the Petitions, it must deny Verizon the regulatory relief it seeks on the ground that Verizon has not met the statutory prerequisites for forbearance contained in section 10 of the Act.

Respectfully submitted,

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March 5, 2007

EXHIBIT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petitions of the Verizon Telephone Companies)	
for Forbearance Pursuant to 47 U.S.C. §)	WC Docket No. 06-172
160(c) in the Boston, New York, Philadelphia,)	
Pittsburgh, Providence, and Virginia Beach)	
Metropolitan Statistical Areas)	

DECLARATION OF JOSEPH GILLAN

I. **Introduction and Qualifications**

1. My name is Joseph Gillan. My business address is PO Box **7498**, Daytona Beach, Florida, **32116**. I am a consulting economist with a practice that specializes in the telecommunications industry.

2. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. My graduate program focused on the analysis of economic issues involving public utilities, including telecommunications.

3. In **1980** I was recruited to join the Policy Analysis and Research Division at the Illinois Commerce Commission, the state agency responsible for regulating public utilities in Illinois. From **1980** to **1985**, I was responsible for the policy analysis of issues created by the emergence of competition in regulated markets, in particular the telecommunications industry.

4. While on the staff of the Illinois Commission, I was named *to* the Staff Subcommittee **for** the Communications Committee of the National Association of Regulatory Utility Commissioners (NARUC). I was also appointed to the Research Advisory Council overseeing the National Regulatory Research Institute, NARUC's research arm located at Ohio State University.

5. In 1985, I left the Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end **of** 1986, I resigned from my position as Vice President, Marketing and Strategic Planning to begin a consulting practice.

6. Over the past twenty years, **I** have provided testimony before more than 35 state commissions, seven state legislatures, the Commerce Committee of the United States Senate, and the Federal/State Joint Board on Separations Reform. I have also been called to provide expert testimony before federal and state civil courts by clients as diverse **as** the trustees of a small competitive carrier in the Southeast to Qwest Communications, a progeny of the AT&T divestiture. In addition, **I** have filed expert analysis with the Finance Ministry of the Cayman Islands and before the Canadian Radio-Telecommunications Commission.

7. I currently serve on the Advisory Council to New Mexico State University's Center for Public Utilities (since 1985) and **I am** an instructor in their "Principles of Regulation" program taught twice annually in Albuquerque. I also lecture at Michigan State University's Regulatory Studies **Program**, **I** have lectured at the School of Laws at **the** University **of** London (England) on telecommunications policy and cost analysis in

the United States. and have been invited to lecture at Northwestern University's School of Law.'

II. Purpose of Declaration

8. The purpose of my declaration is to address the reliability of the E911 database in measuring local competition, particularly as a measure of the number of switched-based lines served by competitive local exchange carriers (CLECs). Each of Verizon's applications for forbearance relies, to one extent or another, on claims regarding the level and scope of local competition derived from the E911 listings.² Because such listings are used by providers of emergency services, there is a false presumption that the database can be used as a measure of local competition?

9. The confidential nature of the E911 database makes it difficult to validate whether it accurately measures local competition! Over the past several years, however, E911-based data has been proffered by Incumbent Local Exchange Carriers (ILECs) in a

¹ A complete summary of my qualifications, listing of testimony and publications is provided as Exhibit JPG-1, attached to this declaration.

² For instance, see *Lew/Verses/Garzillo Decl. – Boston MSA*, at 24; *Lew/Verses/Garzillo Decl. – New York MA*, at 25; *Lew/Verses/Garzillo Decl. – Philadelphia MSA*, at 24; *Lew/Verses/Garzillo Decl. – Pittsburgh UTA*, at 21; *Lew/Verses/Garzillo Decl. – Providence MA*, at 21-22; *Lew/Verses/Garzillo Decl. – Virginia Beach MSA*, at 20-21.

³ Although considerable effort is devoted by all carriers to ensure that the E911 database correctly dispatches emergency service personnel to a correct physical address, that care does not mean that the database correctly measures lines for the purpose of a competitive analysis.

⁴ Although E911 listings are intended to remain confidential and be used exclusively for emergency purposes, some incumbent local exchange carriers (which frequently manage the databases) routinely provide themselves extracts as a means to gather competitive intelligence. For example, SBC Oklahoma recently responded to discovery acknowledging that: "SBC's regulatory organization evaluates aggregate CLEC information that is extracted once a month to derive quarterly estimates of total CLEC access lines within the SBC service area." See SBC Oklahoma Response to RFI 2.23(b), Oklahoma Corporation Commission Docket **200500042**, May 13, 2005.

variety of state proceedings where discovery procedures permitted the comparison of these E911-based claims to actual line counts provided by the CLECs themselves. Although the precise comparisons are protected through confidentiality agreements, the specific conclusions in each of these proceedings are not. In the declaration below, I summarize the results of these validation efforts that demonstrated, without exception, that the E911 database systematically overstates the number of lines served by competitors and, **as** such, it is not a reliable measure of local competition.

III. Summary of E911 Validation Analyses from State Proceedings

10. As indicated, over the past several years a number of incumbent local exchange carriers have sought reduced regulation based, in part, on claims concerning the level of competition measured by information drawn from the E911 database. Because state-level proceedings typically permit discovery, it has been possible to mount an evidentiary challenge to the incumbent's claims. Although the detailed analyses of the E911 database as a measure of competition are confidential, summary information is publicly available.'

11. The most extensive comparison of E911-based competitive claims to actual carrier-provided line counts that found its way to the public record was conducted in an

⁵ There are various **reasons** why the **E911** database would not accurately measure competitive lines. One example is an arrangement where a **CLEC** provides a high-speed digital facility (**DS1**) to a landlord or other intermediary (such as a university) that serves multiple end-user lines or customers behind a PBX. The service provided by the **CLEC** would be equivalent to **24** lines, while the **E911** database might be populated with data on each individual tenant (which, depending on the level of expected simultaneous calls from the building, could be several multiples of **24**). Although the fact that the **E911** database overstates **CLEC** lines is well documented, there **has** not been a comprehensive audit to determine each and every *cause*.

investigation in Oklahoma.⁶ In that investigation (~~as~~ in the other analyses summarized below), it was possible compare the level of competition being attributed to Cox Communications and Logix to actual line counts provided by the carriers. There, the conclusion reached was that “the E911 database systematically inflates CLEC lines, particularly in the business market where the average (of Cox and Logix) error (*i.e.*, inflation) rate is between 70% and 115%.⁷ Although the precise *level* of the inflated line count cannot be discerned from the public Oklahoma testimony, the *percentage* error ~~as~~ a measure of business lines (70% to 115%), ~~as~~ well as the broader conclusion that “[t]he E911 database is simply and unambiguously not a reliable measure of local competition,” is known.⁸

12. The conclusions reached in Oklahoma are not unique *to* that State or to the claims of that ILEC. Similar analyses were conducted in Kansas, Wisconsin and Illinois. In Kansas, the investigation concluded:

Based on a comparison of business lines to E911 listings for Cox, it appears that the same ~~reasons~~ that the E911 database systematically inflates estimates of CLEC lines elsewhere apply with equal (or ~~greater~~) force here.... the E911 database inflates the number of business lines actually served by Cox by 222%.⁹

⁶ See Supplemental Testimony of Joseph Gillan on behalf of Cox Communications, Oklahoma Corporation Commission Docket 200500042, May 23, 2005. Attached ~~as~~ Exhibit JPG-2.

⁷ *Id.*, at 6.

⁸ *Id.*, at 2 (emphasis in original).

⁹ Testimony of Joseph Gillan on behalf of Cox Communications and WorldNet, Kansas Corporation Commission Docket No. 05-SWBT-907-PDR, May 27, 2005, at 18-19 (Footnotes omitted). Attached as Exhibit *JPG-3*.

13. Not only did the E911 database systematically inflate the number of lines actually served by Cox in Kansas overall, but the analysis further revealed that the overstatement applied in each ~~of~~ the markets served by Cox (*i.e.*, Topeka and Wichita):”

Table 4: Comparing Actual Business Lines to E911 Listings

	Actual Lines	E911 Listings	Percentage Error
Topeka			146%
Wichita			225%
Total			222%

14. The conclusion that the E911 database overstates CLEC lines was also validated by a proceeding in Wisconsin. In that state, SBC Wisconsin relied upon the E911 database to attribute a level of lines to two carriers (TDS Metrocom and McLeodUSA) that significantly exceeded the number of UNE loops leased to those carriers. SBC Wisconsin attempted to explain the difference between the number of lines in the E911 database and the number of loops leased by the carriers by claiming that “other facilities” (facilities other than UNE loops leased from SBC) were being used to provide service to residential customers. These carriers explained in discovery, however, that neither ~~served~~ *any* residential customers over facilities other than loops ~~leased~~ from SBC. Consequently, the evidence showed that the E911 database overstated the number of lines actually served by these carriers.¹¹

¹⁰ *Ibid.* at 19.

¹¹ Direct Testimony of Joseph Gillan on behalf of the Citizens Utility Board, April 19, 2005, Wisconsin Public Service Commission Docket No. 6720-TI-196, at 22-24. Attached as Exhibit JPG-4.

15. A similar proceeding in Illinois provided further validation that the E911 database is not a reliable measure of local competition. In Illinois, **44%** of the non-cable residential listings¹² claimed by Illinois Bell **as** evidence **of** residential lines served by competitors were attributed to either backbone network providers (such as Global Crossings and Level 3), or carriers that only provide business services (such as Focal Communications and XO).¹³ Similarly, the Illinois proceeding revealed that the residential line counts attributed to TDS Metrocom and McLeodUSA (which at least do provide residential service), were based on the implied claim that these carriers *self-provided* 15% **of** the loops used to serve residential customers, a configuration that the carriers do not use.

16. Finally, Verizon recently requested reduced regulation in New York based, in part, on an E911-derived estimate **of** business lines served by CLECs in that State. Significantly, Verizon's E911-based claim significantly exceeds the total number **of** facility-based business lines reported to the FCC for the entire **State**.¹⁴ Indeed, assuming that **none** of the other ILECs in New York are leasing a switch-based wholesale service to competitors (an absurdly conservative assumption), "the number of business lines served

¹² Because the Illinois proceeding was limited to residential service, the analysis in that State only evaluated whether E911 listings provided a reliable measure **of** residential competition.

¹³ Gillan Direct Testimony, Data Net Systems Exhibit **JPG** 1:0, Illinois Commerce Commission Docket No. **06-0027**, March **6,2006**, at 26. Attached as Exhibit **JPG-5**.

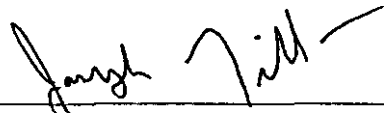
¹⁴ Source: Local Telephone Competition: **Status as of** December **31, 2005**, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, July 2006 ("FCC December **Local** Competition Report"). The number of CLEC Business Lines is calculated by multiplying the number **of** total lines being served by CLECs in New York (Table 9) by (1- the % **of** residential lines **served** by CLECs reported in Table **12**).

by CLEC facilities in New York claimed in the **Verizon** Report (based on its “E911 methodology”) is **more than 50% larger than the FCC reports.**”¹⁵

IV. Conclusion

17. Verizon’s forbearance requests rely extensively on claims regarding local competition based on the E911 database. As shown above, however, in each and every instance where the E911 database has been made available for validation, the database has been shown to inflate the level of competition. The E911 database should not be relied upon to any extent to determine the level of competition in any market.

Executed on March 2, 2007.



Joseph Gillan

¹⁵ Gillan Report, New ~~York~~ Public Service. Commission Case No. 064-0897, Submitted with Joint Comments of COMPTTEL, Cordia Communications, Covad Communications, InfoHighway Communications, Smart Choice Communications, Transbeam, and XO Communications, September 25, 2006, at 6 (emphasis in original). The maximum **number** of business lines served by CLEC-switching is calculated by subtracting **(1)** the number of business lines that Verizon reports being **served** using Resale and Wholesale Local Advantage from (2) the total number of CLEC business lines reported by the FCC. To the extent that some of the CLEC business lines (~~as~~ counted by the FCC) **are** relying on switching provided by ILECs other than Verizon in New ~~York~~, the calculation incorrectly counts the lines **as** being provisioned on a CLEC switch. As a result, the calculation overestimates the number of lines served by CLEC switching, and the estimate provided by Verizon conflicts with the FCC Local Competition Report by an even greater margin.

EXHIBIT 2

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petitions of the Verizon Telephone Companies)	
for Forbearance, Pursuant to 47 U.S.C. §)	WC Docket No. 06-172 (consolidated)
160(c), in the Boston, New York, Philadelphia,)	
Pittsburgh, Providence and Virginia Beach)	
Metropolitan Statistical Areas)	

DECLARATION

DECLARATION OF LISA R. YOUNGERS:

I, Lisa R. Youngers, hereby declare under penalty of perjury that the following is true and correct:

1. My name is Lisa R. Youngers. I currently am employed in the position of Director, Federal Regulatory Affairs, for XO Communications, LLC ("XO"). My business address is 11111 Sunset Hills Road, Reston, Virginia 20190. My primary job responsibilities for XO include managing all policy matters that affect XO before the Federal Communications Commission ("FCC" or "Commission").

2. This Declaration is made on behalf of XO, and in support of the initial comments filed jointly by XO, Broadview Networks, Inc., Covad Communications Group and NuVox Communications in the above-captioned proceeding (the "Joint Comments"), urging the Commission to summarily dismiss or, at a minimum, deny the Verizon Petitions.

3. XO is a competitive local exchange carrier ("CLEC"), headquartered in Reston, Virginia. Through its operating subsidiaries, XO currently offers a full suite of local and

¹ See *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance, Pursuant to 47 U.S.C. § 160(c), in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, CC Docket No. 06-172 (filed Sept. 6, 2006).

long distance voice, Dedicated Internet Access, Private Data Networking, Hosting and integrated telecommunications services to small businesses, enterprise and carrier customers throughout the service territory of Verizon, including within the **Boston, New York, Philadelphia and Pittsburgh MSAs.**² XO delivers services, in part, over *its own* network facilities, and also employs facilities leased or purchased from other carriers, including Verizon.

4. The purpose of this Declaration is to demonstrate that the Verizon Petitions substantially overstate the progress of local competition within four of the **six MSAs** for which Verizon requests forbearance relief, under Section 10. Specifically, this Declaration reveals that the E911 data presented in the Verizon Petitions does **not** accurately reflect the level and scope of XO's operations within the **Boston, New York, Philadelphia, or Pittsburgh MSAs.** The CLEC business line counts for XO set forth in the Verizon Petitions significantly exceed the actual business line counts recorded by XO's internal ALI databases.

The E911 Database is Not a Reliable Measure of Local Competition

5. The Verizon Petitions rely to a large extent on switched-access line counts that Verizon retrieved from E911 databases. As a general matter, E911 data, such as that used to support the Verizon Petitions, does not accurately reflect the level and scope of CLEC operations within local markets, and therefore does not accurately measure local competition. In state proceedings where real time switched access line counts were made available by CLECs, such E911 data proved to substantially inflate the actual number of switched access lines served by CLECs within certain local markets.³

² XO currently provides service to a small number of customers within the Providence, Rhode Island MSA, that physically are located within Massachusetts, and XO does not actively market its services within that MSA. XO currently does not serve customers within the Virginia Reach, Virginia MSA.

³ See Declaration of Joseph Gillan, appended to the Joint Comments as Exhibit 1 (Mar. 5, 2007) at 4-7.

7. Before the Commission, Verizon already conceded that **E911** data does ~~not~~ correlate to the actual provision of local service by CLECs.⁴ In the same proceeding, a database administrator independently confirmed that **E911** data cannot be used to accurately measure local competition, in particular, within the market for business services?

The Verizon Petitions Inflate XO's Business Line Counts Within Four Markets

8. The CLEC business line counts for XO set forth in the Verizon Petitions significantly exceed the actual business line counts recorded by XO's internal databases, for the Boston, New York, Philadelphia and Pittsburgh MSAs.

9. For the Boston MSA, the Verizon Petitions state that XO served [REDACTED: HIGHLY CONFIDENTIAL] business lines as of the end of December 2005. The information retrieved from XO's ALI database for that market indicates that XO currently serves [REDACTED: HIGHLY CONFIDENTIAL] business lines within the Boston MSA. Therefore, Verizon's business line count for XO, for the Boston MSA, is overstated by [REDACTED: HIGHLY CONFIDENTIAL] business lines, or [REDACTED: HIGHLY CONFIDENTIAL].

10. For the New York MSA, the Verizon Petitions state that XO served [REDACTED: HIGHLY CONFIDENTIAL] business lines as of the end of December 2005. The information retrieved from XO's ALI database for that market indicates that XO currently serves [REDACTED: HIGHLY CONFIDENTIAL] business lines within the New York MSA.

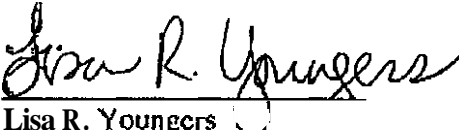
⁴ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Wireless Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), Joint Petition for Stay Pending Judicial Review of BellSouth Telecommunications, Inc., Qwest Communications International Inc., SBC Communications Inc., United States Telecom Association and the Verizon Telephone Companies (filed Sept. 4, 2003) 20.

⁵ *Ex Parte* Letter from Martha Jenkins, Senior Director, Intrado Inc. to William F. Caton, Secretary, Federal Communications Commission (Apr. 19, 2002), at 1-2.

Therefore, Verizon's estimated business line count for XO, for the New York MSA, is overstated by [REDACTED: HIGHLY CONFIDENTIAL] business lines, or [REDACTED: HIGHLY CONFIDENTIAL].

11. For the Philadelphia and Pittsburgh MSAs, the Verizon Petitions state that XO served [REDACTED: HIGHLY CONFIDENTIAL] business lines as of the end of December 2005. The information retrieved from XO's ALI database for those ~~markers~~ indicates that XO currently serves [REDACTED: HIGHLY CONFIDENTIAL] business lines within the Philadelphia and Pittsburgh MSAs.⁶ Therefore, Verizon's estimated business line count For XO, for the Philadelphia and Pittsburgh MSAs, is overstated by [REDACTED: HIGHLY CONFIDENTIAL] business line, or [REDACTED: HIGHLY CONFIDENTIAL].

12. This concludes my Declaration.


Lisa R. Youngers
XO Communications, LLC

Dated: March 5, 2007

⁶ XO was unable to separately quantify business lines in the Philadelphia and Pittsburgh MSAs.

EXHIBIT 3



Verizon Partner Solutions
600 Hidden Ridge
HQEWMNOTICES
P.O. Box 152092
Irving, TX 75038

February 12, 2007

Subject:

Dear

On January 15, 2007, Verizon Communications agreed with FairPoint Communications to spin off local exchange and certain other businesses in Maine, New Hampshire, and Vermont, and to merge the spun-off business with FairPoint Communications, Inc. FairPoint, based in Charlotte, North Carolina, is a communications provider with 31 local exchange companies in 18 states.

The transaction includes local exchange service, intraLATA toll service, network access service, and enhanced voice and data services provided by the legal entity Verizon New England Inc. in the states of Maine, New Hampshire, and Vermont. In addition, the transaction also includes long distance voice, private line (where end points are within these states), and Customer Premises Equipment services provided by the legal entity Verizon Select Services Inc. in these three states.

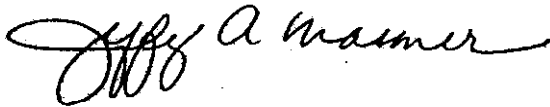
Verizon Partner Solutions and FairPoint wanted to reach out to you to address any concerns you may have about this recent announcement. Keep in mind that the transaction is subject to certain regulatory and other approvals, which will likely take up to a year to complete. Until these approvals are received and the transaction is closed, Verizon Partner Solutions will continue to provide uninterrupted sales support and excellent customer service.

The joint objective of Verizon and FairPoint is to make the transition from Verizon to FairPoint seamless to your organization. To that end, Verizon proposes to assign your agreement(s) to FairPoint effective on the closing date of the transaction. You will be contacted at a later time to discuss assignment of the above identified agreement(s).

Both Verizon Partner Solutions and FairPoint Communications look forward to continuing a long-term relationship with your company, and the opportunity to provide wholesale solutions for your business needs. In the coming weeks, your account team or another Verizon representative will reach out to you to discuss the transaction and how it affects you. This will be followed by a contact from the FairPoint team. At this time there is no action required on your part as a result of this recent announcement. However, should any questions arise before we or FairPoint calls you, please do not hesitate to contact your Verizon account team, or the undersigned Verizon representative, directly.

Sincerely,

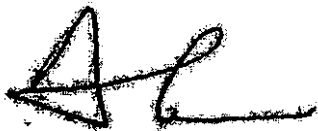
VERIZON PARTNER SOLUTIONS

A handwritten signature in black ink, appearing to read "Jeff A. Masoner".

Jeffrey A. Masoner

Vice President - Interconnection Services Policy & Planning

FAIRPOINT COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Peter G. Nixon".

Peter G. Nixon

Chief Operating Officer

VIA First Class USPS Mail